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U.S. Citizenship  
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FILE:

MSC-05-230-14663

Office: NEW YORK

Date:

**OCT 31 2008**

IN RE:

Applicant:

APPLICATION:

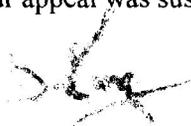
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that she entered the United States on November 20, 1981 without inspection. She states that she traveled to Jamaica from December 21, 1986 to January 10, 1987. She states that she traveled without advance parole or government authorization and returned to the United States without inspection. The applicant state that during the amnesty period, she attempted to apply for amnesty with an INS (Immigration and Naturalization Service) office in New York, but her application was not accepted because she had traveled outside the United States. The applicant states that she traveled back to Jamaica after the amnesty period. She states that she reentered the United States on or about December 1988.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the

provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on May 18, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed her first address in the United States to be at [REDACTED] Brooklyn, New York from December 1981 to June 1989. At part #33, the applicant showed her first place of employment in the United States to be with [REDACTED] in Brooklyn, New York from March 1989 to July 1989.

The applicant submitted the following documentation:

- Identical affidavits from [REDACTED] and [REDACTED], respectively dated May 4, 2005. The affidavits state that the affiants have known the applicant since 1988. The affidavits fail to convey how and where the affiants first became acquainted with the applicant. They also fail to convey how the affiants dated their initial acquaintance with the applicant. Furthermore, the affidavits do not indicate the month in 1988 when the affiants first became acquainted with the applicant. This information is necessary to assess whether the affiants became acquainted with the applicant during the requisite period. Given these deficiencies, these affidavits are without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED], dated January 31, 2006. Ms. [REDACTED] states in her affidavit that she is a friend of the applicant's family. She states that the applicant first came to the United States on or about December 10, 1981. This affidavit fails to establish the origin of the information [REDACTED] has attested to. There is no indication that she has first hand knowledge of the applicant's residence in the United States during the requisite period. Also, the affidavit fails to indicate the date that [REDACTED] first became acquainted with the applicant in the United States. Furthermore, the affidavit does not illustrate the type of contact they maintained during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED], dated January 31, 2006. Mr. [REDACTED] states in his affidavit that he is the applicant's family member. He states that the applicant came to the United States in 1981. He states that during the period of January 1982 to 1988, the applicant worked as a babysitter at various places in Brooklyn, New York. He states, "I am aware of these facts because the applicant is the sister-in-law of my daughter who visited her at these addresses on many occasions." However, there are no addresses listed in this affidavit. Furthermore, this affidavit does not establish the origin of the information [REDACTED] has attested to. There is no indication that [REDACTED] has first hand knowledge of the applicant's residence in the United States during the requisite period. The affidavit fails to indicate the date that [REDACTED] first became acquainted with the applicant in the United States. Also, it does not illustrate the type of contact they maintained during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED], dated January 31, 2006. Ms. [REDACTED] states in her affidavit that she is the applicant's sister-in-law. She states that she has known the applicant since 1978. She states that she is aware of the applicant's entry in to the United States in December 1981 because they spoke on the phone. She states that when she came to the United States in 1984 the applicant came to visit her. She states that she frequently visited the applicant at [REDACTED], Brooklyn, New York. This affidavit provides some information on [REDACTED] relationship with the applicant in the United States during the requisite period. However, it lacks considerable detail on her contact with the applicant in

1984. The affidavit fails to state where [REDACTED] resided in 1984 and how long the applicant visited her. It also fails to explain how [REDACTED] was able to date her knowledge of the applicant's initial entry into the United States in December 1981. Furthermore, the affidavit does not illustrate the frequency of their contact during the requisite period. Given these deficiencies, this affidavit is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

On February 6, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the applicant is statutorily ineligible for temporary resident status because she reentered the United States in March 1988 with a nonimmigrant visa. The director determined that the applicant was not unlawfully present in the United States from January 1, 1982 to May 4, 1988. The director determined that the applicant's affidavits appear to be neither credible nor amenable to verification. The director found that these affidavits do not include a document identifying the affiant; proof that the affiant was in the United States during the requisite period; proof that there was a relationship between the applicant and affiant; and the affiant's current phone number. The director noted that the affidavit from [REDACTED] does not include any proof that he was present in the United States during the requisite period and proof of his direct personal knowledge of the events being attested to. The director afforded the applicant 30 days to submit additional evidence in response to the NOID.

While the director was correct in her overall finding that the applicant failed to submit sufficient evidence of her residence in the United States, there was an error in her analysis. The director determined that the applicant is statutorily ineligible for temporary resident status because she reentered the United States in March 1988 with a nonimmigrant visa. The director determined that because of this entry, the applicant was not unlawfully present in the United States from January 1, 1982 to May 4, 1988. However, January 1, 1982 through May 4, 1988 is not the requisite period at issue in this proceeding. Under section 245A of the Act, an applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b). Under the CSS/Newman Settlement Agreements, the term "until the date of filing" means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The record does not reveal the date the applicant attempted to file or was caused not to timely file a Form I-687 application during the original legalization application period. Consequently, the applicant's entry into United States in March 1988 with a nonimmigrant visa does not render her

statutorily ineligible for temporary resident status. Accordingly, this part of the decision is withdrawn from the record. Nevertheless, the director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

In rebuttal to the NOID, the applicant furnished her own affidavit, dated February 28, 2006. The applicant states in her affidavit that she first entered the United States on November 20, 1981 without inspection. She states that she traveled to Jamaica from December 21, 1986 to January 10, 1987. The applicant states that she traveled again to Jamaica in March 1988 and returned a few weeks later with a visitor's visa. The applicant states that in December 1986 she traveled without government authorization and returned to the United States without inspection. The applicant states on January 1988, she attempted to apply for amnesty with an INS (Immigration and Naturalization Service) office in New York, but her application was not accepted because she had traveled outside the United States.

The applicant submitted an affidavit from [REDACTED], dated February 24, 2006. Ms. [REDACTED] states in her affidavit that she first met the applicant in Kingston, Jamaica in 1974. She states that the applicant wrote to her and told her that she was residing on [REDACTED] in Brooklyn, New York in 1981. She states that the applicant resided at this address from 1981 to March 1985 and was employed as a babysitter. Ms. [REDACTED] states that she moved to Brooklyn, New York in 1982 and visited the applicant at [REDACTED]. She states that in March 1985 she assisted the applicant with moving to [REDACTED], Brooklyn, New York. She states that the applicant resided there until December 1988. She states that she picked her up from this address to go to church and shopping. Ms. [REDACTED] indicates that the applicant worked as a babysitter during this time period. She states that during the Thanksgiving holiday in 1985, she went with the applicant and a friend to a church conference in Maryland. She states that in July 1987 the applicant went with her to a church conference in Connecticut. She states that in December 1986 the applicant traveled to Jamaica and returned to the United States in January 1987. She states that she spoke with the applicant while she was in Jamaica. She states that the applicant traveled to Jamaica in March 1988 and returned after a few weeks with a visitor's visa.

[REDACTED]'s affidavit is materially inconsistent with the applicant's Form I-687. [REDACTED] states in her affidavit that she has personal knowledge of the applicant's residence at [REDACTED], Brooklyn, New York from 1981 to March 1985 and [REDACTED], Brooklyn, New York from March 1985 to December 1988. However, the applicant's Form I-687 shows that she resided at [REDACTED] from December 1981 to June 1989 and [REDACTED] from June 1989 to March 1993. Furthermore, [REDACTED] states that the applicant was employed as a babysitter during the requisite period. On the applicant's Form I-687, she indicated that her first place of employment in the United States was as an assistant with [REDACTED] in Brooklyn, New York from March 1989 to July 1989. Finally, [REDACTED] states that the applicant attended church conferences in Maryland and

Connecticut during the requisite period. However, the applicant left blank part #31 of the application, where applicants are asked to list their associations with any churches. Given these numerous inconsistencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On March 24, 2006, the director issued a Notice of Decision to deny the application. In denying the application, the director determined that there is no evidence that [REDACTED] was present in the United States during the statutory period. The director also determined that there is no credible affirmation that a relationship existed between the applicant and [REDACTED]. The director concluded that the applicant failed to demonstrate by a preponderance of the evidence that she is eligible for temporary resident status and denied the application.

On appeal, the applicant asserts that she entered the United States on November 20, 1981 without inspection. She states that she traveled to Jamaica from December 21, 1986 to January 10, 1987. She states that she traveled without advance parole or government authorization and returned to the United States without inspection. The applicant states that during the amnesty period, she attempted to apply for amnesty with an INS (Immigration and Naturalization Service) office in New York, but her application was not accepted because she had traveled outside the United States. The applicant states that she traveled back to Jamaica after the amnesty period. She states that she reentered the United States on or about December 1988. The applicant submits a memorandum of law, which delineates the statutory and regulatory eligibility requirements for temporary resident status as well as the requirements for CSS/Newman class membership.

The applicant furnishes a copy of the biographical page of [REDACTED]'s United States passport and a copy of [REDACTED]'s United States Naturalization Certificate. The applicant also furnishes fill-in-the-blank form affidavits entitled, "Witness Oath of Presence in the United States from 1982 to 1988," from [REDACTED] and [REDACTED], respectively dated April 14, 2006, April 20, 2006 and April 18, 2006. The affidavits show the affiants' address(es) and place(s) of employment in the United States during the period of January 1, 1982 to May 5, 1988. While these documents offer some proof of the affiants' identity and residence in the United States during the requisite period, they do not overcome the deficiencies in their prior affidavits. Notably, the applicant failed to submit any additional evidence of her residence in the United States during the requisite period.

In summary, the applicant has failed to provide credible, reliable and probative evidence of her residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that she entered the United States prior to January 1, 1982. Nor has she provided sufficient evidence to establish that she has resided in the United States during the requisite period. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence. See 8 C.F.R. § 245a.2(d)(3). The applicant submitted six affidavits as evidence of her residence in the United States during the requisite period. Five of these affidavits lack considerable detail on the affiants' relationship with the applicant in the

United States during the requisite period. The one affidavit that offers some details on the affiant's relationship with the applicant is materially inconsistent with the applicant's Form I-687. Because of these deficiencies, the applicant's documentation is without any probative value as corroborating evidence. The documentation the applicant furnished on appeal fails to overcome this finding.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of her claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the inconsistencies in the record and the lack of credible supporting documentation, it is concluded that she has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.